DOCUMENT RESUME

ED 182 233 SO 012 333

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TITLE What If...You Are Arrested? One of a Series of Readings and Activities--Student Booklet-Set I [And] Set II.
INSTITUTION Institute for Political/Legal Education, Sewall, N.J.
SPONS AGENCY New Jersey State Dept. of Education Trenton. Bureau of Adult, Continuing, Community Education.
PUB DATE 78
NOTE 80p.; For related documents, see SO 012 329-332
AVAILABLE FROM Institute for Political/Legal Education, Educational Improvement Center South, 207 Delsea Drive, Sewell, NJ 08080 ($2.00)

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS Adult Education; *Citizen Participation; Classroom Materials; *Constitutional Law; High Interest Low Vocabulary Books; High School Equivalency Programs; *Legal Education; Reading Comprehension; Reading Skills; Secondary Education; Social Studies; Writing Skills

ABSTRACT

This booklet, part of the "What If...Series," contains readings and activities which will help secondary or adult students learn about the rights of persons arrested and acquire skills necessary for coping with such a situation. The materials present practical applications concerning the following constitutional rights: the right against unlawful search or seizure, the right to remain silent, the right to a lawyer, and the right to reasonable bail. The materials can be used in secondary classes and in naturalization and High School Equivalency Programs. The booklets are written at two reading levels -- Set 1 at grade 4,5 and Set 2 at grade 7,8 -- but content activities and paging of both sets are the same. The booklet contains short reading selections followed by questions which the student is expected to answer in writing. Reading and writing skills are emphasized. Students are also involved in classroom discussion. Optional activities described in the Teacher Guide (SO 012 329) include inviting a police officer to class, playing the simulation game "Police Patrol," going on a police ride-along, and visiting a court room during a preliminary hearing or bail procedure. Teacher training in the use of the materials can be arranged by contacting the Institute for Political and Legal Education. (Author/RM)

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WHAT IF...YOU ARE ARRESTED?

--ONE OF A SERIES OF READINGS AND ACTIVITIES--
STUDENT BOOKLET - SET I

SP 012333

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Material produced by the

Institute For Political/Legal Education
Educational Improvement Center South
207 Delsea Drive, Sewell, New Jersey 08080
609-228-6000

Material developed under a Special Project (309)
Grant from the New Jersey State Department of
Education, Division of Field Services, Bureau of Adult
Continuing and Community Education, Trenton, New Jersey

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WORDS TO KNOW

alleged:	Stated without proof.
arrest (v):	To take a person into custody.
complaint:	A formal charge against a person.
conviction:	The act of being found guilty in a court of law.
counsel:	A lawyer who acts for a person in legal matters.
custody:	In one's control; have charge of.
defendant:	The person against whom legal action is taken.
due process:	A person's right to fair treatment in a legal action.
evidence:	Information given in court to show the facts of a case.
immunity:	Protection which is promised to a witness in return for information.
incriminate:	To charge with a crime; to connect to a crime.
repeal (v):	To call back or withdraw.
testify:	To make a statement in court under oath.
waive:	To give up legal claim.
waiver:	A legal paper that gives up claim to one's legal rights.
warrant:	A legal paper giving to the police the right to make an arrest or a search.
verdict:	The finding of a jury in a court trial; a decision.

WHAT IF ... YOU ARE ARRESTED?

Have you ever thought about what it would be like to be arrested? Or is being arrested something that happens in the movies, on television shows, or in real life, to someone else?

Probably you have heard the words "You're under arrest". Often these words end a TV serial. The suspect has been caught in the last two minutes of the show. In the final scene, you see the suspect being searched, hand-cuffed and then driven away in the police car. Your interest was held by the chase, the shoot out, or the drug bust. Now, it fades with the arrest and you turn to other things. What happens after the arrest is rarely shown. You do not know.

What might <u>you</u> be thinking and feeling if <u>you</u> were arrested? What questions would you have? What facts and information might you need to get help? In the activity below, you are asked to list what some of your feelings, thoughts, and questions would be if arrested.

ACTIVITY A ARRESTED: How do I feel? What do I want to Know?

Suppose you have been arrested. You are in handcuffs and are sitting in a police car. Ask yourself:

What are some of my feelings?

_____

_____

What are some of my concerns?

_____

_____

_____

What do I want to know?

_____

_____

_____

In Activity A you may have put down some of these:

- Do I have to answer questions?
- Do I have to sign anything?
- Can I get someone to help me?
- How will I be treated?
- How long will I be kept in jail?

This booklet will answer these questions and more. You may never be arrested. You may never need this information for yourself. But you may be able to use these facts to help a friend or a relative.

This booklet will give you information on the arrest process. In addition, it will give you a chance to think about justice and fairness. You will think about constitutional rights and the judicial system. Learning important facts and developing informed opinions will help you be an effective citizen.

BEING ARRESTED

"You are under arrest." If these four words are spoken to you, they mean:

- You are in the custody of the police.
- You may not leave.
- You are being held for court action.
- You must go with the officer.

You may be arrested for allegedly commiting:

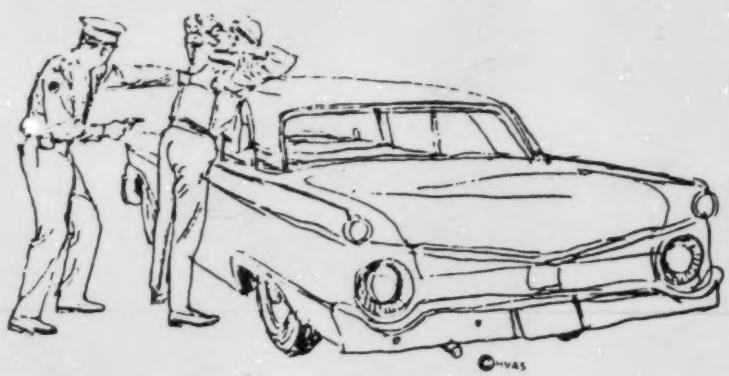
An Infraction - a minor crime such as illegal parking. You will be asked to pay a fine.

A Misdemeanor - a minor crime such as breaking and entry. You will have to pay a fine and/or spend less than a year in jail.

A Felony - a serious crime such as murder or rape. You will spend more than a year in jail.

Sometimes an arrest is made at the scene of the crime. The police may see a person running away from a bank that has just been held up. The suspect may carry a bag. There may be people shouting for police help. Witnesses may point to the running person. Then the police will try to catch the suspect and arrest him on the spot.

At other times, the arrest may take place after months of hard police work. The clues to the crime are found slowly. The police get legal papers - warrants - to permit them to search and seize people, things and places. When they think that they have good reason to suspect someone, the arrest is made.



In either case, the arrest must be made according to certain rules. The police must have good reason to suspect the person. It is their job to enforce the law, not to break it, and they must treat people fairly. This is the way the 14th Amendment to the U.S. Constitution says it:

> Nor shall any State deprive any person of life, liberty or property without due process;
> ... nor deny to any person ... equal protection of the laws.

"Due process" means that your freedom can't be taken away from you carelessly. Certain legal steps must be followed. These steps protect citizen rights. "Equal protection of the laws" means that all people must be treated the same (equally) by the police and the courts.

Your rights are protected by law. But that does not mean that you can ignore the police. If you are driving and you see a police car flashing a red light, stop! When you hear a police siren, stop! If asked to, you must show the police officer your driver's license and car registration.

The police can ask you to identify yourself at any time. They don't need to give you any reason. Even if you are just standing on a street corner, they can ask your name and address. For this reason, it is a good idea to be able to prove who you are. Do you have a driver's license? A social security card? A voter registration card? Carry one to show, when you are asked who you are.

Police can ask you why you are in an area. They have the right to stop and question people. This power is based on their duty to protect their town or city. There might have been a robbery in the area. You might look like the suspect, or you may be able to give information to the police.

The police don't have to give you a reason for stopping you. But they must have <u>probable cause</u> to do so. They must think that you are involved in a crime, at least as a witness, in order to stop you.

They can also frisk you to see if you are carrying a weapon. This is to protect themselves. But, again, the officer must have probable cause. It must be believed that you are armed. If not, the stop-and-frisk can be ruled illegal.

The 4th Amendment to the Constitution states that the police can't search you or arrest you without cause. They can't arrest you just because they don't like the way you look.

In the words of the 4th Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The 4th Amendment protects your right to privacy. It keeps the government (the police) from searching you or your home without cause. Search warrants - legal papers signed by a judge or court - can only be given for probable cause. The person giving information for the warrant must swear that it is true. The warrant must describe:

- the place to be searched
- the people to be searched
- the things to be taken

The words of the 4th Amendment seem quite clear. They seem to protect the citizen by requiring the police to follow certain rules. But some people say that they were not treated fairly by the police. These people have filed suit. Some cases went to the Supreme Court. The decisions made on these cases have affected citizen rights across the nation.

One important case involved a woman named Mapp. She lived in Ohio. One day police came to Mrs. Mapp's door. They were looking for a suspect in a bombing case. They wanted to be let into her house. Mrs. Mapp would not let them in. She argued with them for several hours. Then more police arrived at her home and pushed in the door. She wanted to know what right they had to enter her home. She demanded to see the search warrant. Later she said that a piece of paper had been waved in front of her eyes but that she could not read it. She could not tell whether or not it was a search warrant.

Nonetheless, in spite of Mrs. Mapp's protests, the police searched her home. They did not find the suspect. But they did find some "dirty books". Having "dirty books" in her house was against the law in Ohio. When the case went to court, the books were used as evidence. Mrs. Mapp was found guilty of breaking the law.

But she believed that the verdict - the decision of the court - was unfair. She believed that the search of her home had been illegal. For that reason she thought that the evidence - the "dirty books" - should not be allowed in court. She took her case to a higher court. She asked that the higher court overturn the verdict of the lower one.

In Activity B you will review the facts of the Mapp case. Was the police search an invasion of her right to privacy? Did the police get the "dirty books" legally? If they were not gotten legally, should they be allowed in court as evidence? If you had been a judge in the U.S. Supreme Court, what would you have said?

ACTIVITY B Search and Seizure: What is Fair?

1. List the major facts in the Mapp Case.

2. Give the main argument of Mrs. Mapp's lawyers?

3. Should the police be permitted to use unlawful means to obtain evidence? Why or why not?

4. Would you as a Supreme Court judge vote to overturn Mrs. Mapp's conviction?

   Why or why not?

5. Discuss your decision with some one else. Did you agree? If not, how did it differ from yours?

Mrs. Mapp won her case before the Supreme Court. The Court ruled that the evidence was taken illegally. It should not have been allowed in court. And without the evidence, the police had no case against Mrs. Mapp.

The Mapp case has had wide effect. Now the police must follow rules in getting evidence. For instance, they must have a search warrant to search your house. Many police argue that these rules make police work very hard. They say that criminals do not act fairly. Yet they need to be caught and jailed. If some evidence can't be used, the criminals will go free.

On the other hand, a famous judge of the Supreme Court, Oliver Wendell Holmes said:

> "It is better to let a criminal go free than for the government (police) to play an ignoble (dishonorable) part".

Write why you do agree or do not agree with Holmes' statement.

_____

_____

_____

_____

_____

_____

_____

Search warrants are important. Would you know what one looks like if a police officer showed one to you and asked to search your house? You should learn to recognize one. Read the search warrant on the next page and do Activity C on page 10. Then you will know what to look for if the police show you a warrant.

In the Municipal Court of the

_____ of _____ County of _____ 172.

State of New Jersey

State of New Jersey,

vs.

Defendant.

SEARCH WARRANT

To the Sheriff, or any Constable, Marshal, or Police Officer of said County, or to any Officer or Trooper of the New Jersey State Police:

WHEREAS, proof, by oath, having been this day made before this court by

of the of

County of State of New Jersey, and there is probably cause for believing that said affidavit is true, that the following goods:

(describe articles as in complaint)

have been feloniously stolen and carried away from his and that he has reasonable cause to suspect, and does suspect that said goods and chattels are concealed in

(describe premises as in complaint)

You are Therefore Commanded, in the name of the State of New Jersey, to make immediate search of the person of the defendant and, in the daytime, of the building above situated and described, for the said goods and chattels; and if you find the same, or any part thereof, that you secure the same and bring it or them forthwith before this court with the body of the defendant, to be dealt with according to law.

Signed and sealed this

day of 19

_____

Judge - Magistrate

of the of

County of N. J.

Officer executing warrant must give receipt for property, specifying it in detail, to the person from whom it was taken, or in whose possession it was found, or, in absence of any person, leave receipt in place where he found the property, make inventory publicly or in presence of person from whom property is taken and applicant for warrant. If he be present return warrant and deliver property taken to the magistrate issuing it along with the body of the defendant if he be arrested.

ACTIVITY C Understanding a Search Warrant

Read the search warrant on page 9. Answer the questions.

1. To whom is the warrant addressed?

2. How was proof given?

3. Why do the police have to describe the goods to be seized and the place to be searched?

4. Who signs the warrant?

5. What are the police to do if they find the defendant and/or goods?

6. How does the rule requiring a search warrant protect you?

Due process, under the 4th and 14th Amendments protects you from illegal arrests or unfair treatment by the police. But, sometimes mistakes are made. At times the wrong person is arrested. If this should happen to you, do not argue with the officer. Do not "mouth off" or resist arrest in any way. That might cause you to face charges of assaulting the police!

Instead:

- Keep calm
- Remember badge numbers and names of police involved.
- Find witnesses.
- Go to the police station.
- Ask for a lawyer.
- Give only your name and address.
- Do not sign anything except the receipt for your belongings.

If the police make an illegal arrest, if your rights are not respected, you can sue. You may be awarded money - "damages" - if you can prove your case. And, if the arrest was not legal or the case against you is not proven in court, you can have the records of the arrest sealed. That means that the arrest is not on your record. Your rights to sue and to have your records sealed are important for your legal protection.

ACTIVITY D Citizen Complaints: What are the Procedures in your Town?

1. Does your local police department have a method for handling complaints against an officer?

   Yes_____ No _____

   If so, what is it?

   _____

   _____

   _____

2. How many complaints were there in 1977-78?

   _____

3. Did any of the complaints result in an officer(s) being removed from the force?

   Yes _____ No _____

   If so, how many?

   _____

   _____

   _____

   _____

4. How does the police department tell citizens about the complaint method?

   _____

   _____

   _____

5. Was the police department helpful in answering your questions?

   Yes _____ No _____

   If not, what could you or your adult education class do?

   _____

   _____

   _____

   _____

   _____

   _____

   _____

If you are arrested, you will be taken to the police station. There you will be "booked". That means that the police will write your name and address in the arrest book, or "on the blotter". Then your fingerprints will be taken. You will be photographed. Your money and personal things may be taken (impounded). The police will give you a receipt for them. You are asked to sign it. The officer who arrests you must fill out a complaint. Part of a complaint form is printed below. The officer must also write out an arrest report.

Read the part of the complaint form shown below. Then read the Arrest Report on page 14. Note that the Arrest Report has space for BAIL HEARING and FINAL RESULTS. When your case is complete, the Report will show the whole story, from arrest to FINAL RESULTS. Answer the questions on page 15.

WB62534

COURT

COUNTY OF _____ N.J.

COURT DOCKET NUMBER(S): C–

COURT CODE NUMBER

COMPLAINT RESULT OF CASE RETURNED BY PROSECUTOR

PRIOR CASE DOCKET NUMBER: C–

The State of New Jersey
vs.

Defendant: Anthony Paul AnyPerson

Address: 233 Your St.

City, State: Woodbury, N.J.

COMPLAINT

Complainant: Ptl. Jay Brown (NAME OF COMPLAINANT) of Woodbury Police Dept. (IDENTIFY DEPARTMENT OR AGENCY REPRESENTED)

Residing at _____ (ADDRESS OF PRIVATE CITIZEN COMPLAINANT)

Upon oath says that, to the best of (his) (her) knowledge, information and belief, the named defendant on or about the 18 day of Jan, 19 78, in the city of Yourtown (MUNICIPAL CODE NO.) County of Gloucester N.J. did:

Break& enter home at 57 Johnson St.

Charge Number 1	Charge Number 2	Charge Number 3
N.J.S. 2A:94-1	N.J.S.	N.J.S.

Subscribed and sworn to before me this 18 day of January, 19 78

Signed _____ (NAME AND TITLE OF PERSON ADMINISTERING OATH)

Signed _____ (COMPLAINANT)

WOODBURY POLICE DEPARTMENT

ARREST REPORT

Identification Number: 4491

1. Complaint Number	2. Mun. Code	3. Phone Number	4. UCR	5. Prosecutor's Case Number	6. Department Case Number
WB 62534		845-0064			78 - 117

7. Name Last	First	Middle	8. Phone	9. Alias-Nickname
ANYPERSON	Anthony	Paul	888-2222	Tony

10. Full Address - Number - Street - Municipality - Zip code	11. Place of Birth
233 Your St., Woodbury, N.J.	Sewell, N.J.

12. Date of Birth	13. Age	14. Sex	15. Race	16. Height	17. Weight	18. Hair	19. Eyes	20. Complexion	21. Marital Status
8-14-55	22	M	Cau	5'10½"	180	Brn	Brn	Med	Single

22. Other Descriptive Information	23. Driver's License Number
Lft index finger is missing	A222 45378 08559(N.J

24. Employer	25. Occupation	26. Social Security Number
You Buy Markets Inc.	Cashier	333-444-5555

27. Employer's Address	28. Business Phone
770 Main St., Yourtown, N.J.	999-1111

DETAILS OF ARREST

29. Arrest Date	30. Time	31. Location of Arrest	32. Municipal Code
01/18/78	2:30a.m.	57 Johnson St.,Woodbury, N.J.	

33. Crime	34. N.J.S. Statute	35. Arresting Officer
Breaking, Entering	2A:94-1	Ptlm. Brown

36. Complainant's Name and Address - Zip Code	37. Phone Number
Ptlm. Brown, Woodbury, P.D.	845-0064

38. Crime Dept.	39. Time	40. Location of Crime	41. Municipal Code
Patrol	2:30a.m.	57 Johnson St.	

42. Arrest Type	43. Juvenile Status	44. Code	45. Constitutional Rights - By Whom	46. How Responded
On View	N/A		Arresting Officer	Waived Orally

47. Own	48. Multiple	49. Other	50. Printed	51. Photo	52. Prev. Rec.	53. UCR - A.S.R.
yes			Yes	Yes	Unk.	Reported Month_____Year_____

54. Vehicle Information - Year - Make - Body Type - Color - Registration Number & State - Other Descriptive Information
1978 Chev. Blu 555111 (N.J.) 4 Dr.

BAIL HEARING

55. Date	56. Court	57. Judge/Authorized Person

58. Amount Bail	59. Results of Hearing	60. Code	61. Place Committed/Detained

FINAL RESULTS

62. Date	63. Court	64. Judge

65. Verdict	66. Code	67. Disposition	68. Date	69. Code

JUVENILE INFORMATION

70. Parent/Guardian Contacted By	71. Date	72. Time	73. Released To:	Relationship

74. Full Address - Number - Street - Municipality - State - Zip Code	75. Date	76. Time	77. Phone Number

78. Parent/Guardian	79. Full Address - Number - Street - Municipality - State - Zip Code	80. Phone Number

81.	82.	83.	84.	85.	86.	87.	88.

89. Narrative

Name / 90. Signature	91. Badge Number	92. Completed	93. Date of Report	94. Reviewed

ACTIVITY E Understanding Arrest and Complaint Forms.

Read the facts of the "made-up" case reported on page 13 and 14.

1. What is the complaint number?

_____

2. Who has been arrested (the defendant)?

_____

3. Who is the complainant (making the complaint)?

_____

4. Who is the arresting officer?

_____

5. When did the arrest take place?

_____

6. Where did the arrest take place?

_____

7. What is the crime?

_____

8. Why do you think the arrest report has so many details about how the suspect looks?

_____

_____

_____

_____

9. Why do you think the complaint is made under oath?

_____

_____

_____

_____

_____

_____

WOODBURY POLICE DEPARTMENT
200 North Broad Street
Woodbury, New Jersey

Interrogation
Advice of Rights

Place: _____

DATE: _____

TIME: _____

Before we ask you any questions, you must understand your rights.

Q. Can you read and write?
A.

Q. Do you understand that you have the right to remain silent?
A.

Q. Do you understand that anything you say can and will be used against you in court?
A.

Q. Do you understand you have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning?
A.

Q. Do you understand that if you cannot afford a lawyer, one will be appointed for you before any questioning if you wish one?
A.

Q. Do you understand that if you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time? You also have the right to stop answering at any time until you talk to a lawyer.

Signed: _____

Waiver of Rights

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been used against me.

Signed: _____

Witness: _____

Witness: _____

Time: _____

BEING QUESTIONED

Up to this point, the police have not questioned (interrogated) the suspect about the alleged crime. They have asked only questions about the suspect's name and address.

If you are arrested and the police want to question you, they must tell (advise) you of your rights. The Woodbury Police use the form on page 16.

ACTIVITY F Interrogation: What are your Rights?

1. What rights does this form advise you of?

_____

_____

_____

_____

2. Why would the police want you to sign the form?

_____

_____

_____

3. If you start to answer questions, must you continue? Yes___ No ___
If not, what can you do?

_____

_____

_____

_____

_____

_____

_____

_____

4. What does it mean to "waive your rights"?

5. Do you think it's a good idea to waive your rights? Yes___ No___
Why or why not?

6. Why do you think two witnesses are needed?

7. Why do the police want to know if you can read or write?

Two important rights are shown on the advice and waiver form on page 16:

- the right to remain silent
- the right to talk with a lawyer

Our founding fathers thought that these rights were needed to protect each person. They wrote them into the U.S. Constitution. Before waiving these rights, an arrested person should understand their importance.

The 5th Amendment says that:

> No person...shall be compelled(forced) in a criminal case to be a witness against himself...

If you remain silent, you cannot by your words seem to involve yourself in a crime (incriminate yourself). Therefore, lawyers say that all arrested persons should keep silent. People should give only their name and address until they talk to a lawyer.

But your right to be silent may make the police work of solving a crime harder. The police would like to get a person to confess - admit guilt. Then a case may be solved more quickly.

In the past, some police did not tell people of their right to remain silent. Instead, police used many different ways to get a confession. Some of them used physical and mental force. Suspects were questioned for hours. Then they confessed just to get sleep or food. Police offered to "help" the defendant even when they had no power to give it. They promised a lighter sentence in trade for a statement of guilt.

Some of these police methods led to law suits. In 1966, a famous case, Miranda v. Arizona, came to the U.S. Supreme Court. The case was about a man by the name of Ernesto Miranda. He was arrested for the kidnapping and rape of a woman in Arizona. He had been picked

out of a line up by the woman. He was questioned for hours by the police. Then he signed a written confession. It was used as evidence in his trial. Miranda was found guilty.

Miranda appealed his case to the U.S. Supreme Court. His lawyer argued that the police had not read his legal rights to him before they questioned him. They should have explained that he had:

a right to remain silent

a right to a lawyer

The State of Arizona said that the police had read Miranda a statement on the top of the confession form. It said that the confession was made freely. There had been no threats or promises of freedom. It ended with these words:

> With full knowledge of my legal rights and understanding that any statements I make may be used against me.

The Arizona lawyers argued that Miranda knew what he was doing when he signed the confession. He signed of his own free will.

Suppose you had been a judge hearing the facts of this case. What would you have decided? For Miranda or for the State of Arizona?

ACTIVITY G The Miranda Case: What Do You Think?

1. Why might Miranda have signed a confession?

2. Why should the court look at the way a confession is gotten? Does it make a difference how a confession is made?

3. Should police have to tell people their rights? Or should people know them without being told?

4. How does the law try to balance the citizen's right to remain silent with the state's duty to solve crime?

5. How do you think the Supreme Court ruled in the Miranda Case?

The Supreme Court ruled in favor of Miranda. Most of the judges felt that he had not been properly warned of:

the possible results of waiving his rights

- to remain silent
- to have a lawyer during questioning

the effect of signing a confession

the possible use of his confession against him in court

Therefore his signed confession should not have been used against him in court.

This ruling has not thrown all signed confessions out of court. If a confession is given freely with full protection of the person's rights, it may stand in court. But the ruling does protect the rights of the arrested. Reading the rights to an arrested person is known as giving the Miranda warnings:

1. You have the right to remain silent.
2. Anything you say may be used against you in court.
3. You have the right to have a lawyer advise you.
4. If you cannot afford a lawyer, one will be provided free of charge.

BEING REPRESENTED

The right to have a lawyer is based on the 6th Amendment to the Constitution. It says that ...

> in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense.

At one time this right seemed to mean only that a person had a right to a lawyer. But when in the proceedings is a lawyer required? During the trial? At the first (preliminary) hearing? At a suspect "line-up"? During questioning? And what if a person had no money to pay legal fees?

RIGHT TO COUNSEL

"You have a pretty good case, Mr. Pitkin. How much justice can you afford?" [1]

ACTIVITY H Right to Counsel: What do you think?

1. Who are the two people in the cartoon?

_____

2. What is the meaning of the cartoon?

_____

_____

_____

_____

_____

_____

[1] Drawing by Handelsman; © 1973 The New Yorker Magazine, Inc.

3. What do you think about this statement?

> There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.
>
> Justice Black

_____

_____

_____

_____

_____

Gideon v. Wainwright (1961) was an interesting case. It was about the right to have a lawyer. Again, the case involved one man's fight for his constitutional rights. The fight by one person can result in a court decision that affects many people. The whole judicial system may be changed.

Police in Florida arrested Clarence Gideon for "breaking and entering" a pool hall. Gideon, age 51, had been arrested four times. He had been married three times. He was known as a gambler and a drifter. Some might describe Gideon as a "loser". Some people assumed that he was guilty. Gideon claimed that he was innocent. He wanted to prove it. He felt that he needed the help of a lawyer. He told the judge that he had a right to a lawyer. He had no money to pay a lawyer, so he asked the court to provide him with one.

But the judge said no. Florida State Law did not require a lawyer for such a case. A lawyer was required only when the suspect is accused of a crime that might lead to a death sentence. Gideon was charged with a misdemeanor. He did not have the right to a free lawyer. He was not able to defend himself successfully during his trial. The jury found him guilty. The judge sentenced him to five years in State prison.

While he was in prison, Gideon studied law books. He prepared his own appeal to the U.S. Supreme Court. He charged that Florida had refused him due process of law. The Court heard Gideon's case. It agreed that he had not received due process. A lawyer should have been appointed to defend him. There was a new trial. With a lawyer to represent him, Gideon was found not guilty (acquitted).

This Supreme Court decision has had far reaching effects. Now, the poor as well as the rich can be sure of having a lawyer when arrested.

Gideon was arguing that it is important to have a lawyer represent you. It is a constitutional right. It is a practical need, too. A person who does not know a lot about the law can't properly defend himself. A lawyer will see that your rights are protected. To do so he will perform certain tasks:

Amendment	Task
6th ...the accused shall enjoy the right...to be informed of the nature and cause of accusation.	Seek an early preliminary hearing.
8th Excessive bail shall not be required...	Request reasonable bail.
6th In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...	Arrange for speedy trial
6th ...the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor...	Call (subpoena) witnesses on your behalf.
6th ...the accused shall enjoy the right... to be confronted with witnesses against him.	Question your accusers.

What if you have been arrested? What if you are in jail? How do you reach a lawyer?

There is no law in New Jersey requiring the police to allow a suspect to make a telephone call. But most police departments do allow you to complete one call. This call should be directly to a lawyer or to a person you trust. That person should then get you a lawyer.

It might be useful to carry the name and phone number of a good lawyer with you. Then you will have it, if you need it. You or a friend might know a lawyer who would help you. The lawyer might be someone recommended by a friend. Or you can get the name of lawyers in your town by calling the Lawyer Referral Service of the N.J. Bar Association. (Toll free number 800 - 792-8315 - 9:00 a.m. - 4:30 p.m., Monday through Friday)

Lawyers' fees may be high. They are based on the amount of time and work spent on your case. Before you hire a lawyer, you should ask him for an estimate of the costs. He should give this to you in writing, and you should keep it. Most lawyers request a down payment to cover the work in progress.

You may not have enough money to hire a lawyer. You may be qualified to be represented by the Public Defender's Office. To determine if you qualify, you will have to fill out forms. Forms like those are printed on the next three pages.

You will have to answer questions. You must swear that your answers are true. Some people believe that the questions are too personal and private. Some argue that the information is needed. The purpose is to see that only very poor people are represented by the Public Defender.

ACTIVITY I Applying to be Represented by the Public Defender.

Ask your teacher to help you read the next three pages. Think about how you would answer the questions. (It is not necessary to write them.) Then write the answers to these questions.

1. List any questions you thought should not have been asked. Tell why you felt that way about the questions.

2. List any questions you did not understand.

3. Why do you think you must answer these questions under oath?

4. If you give false information, what can happen to you?

(If the defendant is charged with an indictable offense, asserts he is indigent, and has not affirmatively stated his intention to proceed without counsel, have him complete this application and then refer it to the Office of the Public Defender).

APPLICATION FOR REPRESENTATION BY THE
OFFICE OF THE PUBLIC DEFENDER

I have completed the attached Affidavit (Income and Assets) to inform the Court as to my ability to pay an Attorney and to have the Court refer me to the Office of the Public Defender as an indigent defendant charged with an indictable offense.

Place of Birth_____ Date of Birth_____

Sex_____ Ht._____ Wt._____ Race_____ Date Arrested_____.

Place Alleged Offense Committed_____ (Town) Date Alleged Offense Committed_____.

Arrested By_____ (Name of Arresting Agency and Location).

Check (and complete) whichever applies:

_____I am presently in jail and unable to obtain bail.
_____If I am released, I have a job waiting (yes) (no) with _____
_____I have been released on bail in the amount of $_____, which was posted by_____.
_____I have been released without bail or on my own recognizance.

On the present charge I (was) (was not) represented by an Attorney in the Municipal Court. If you were represented, give his name and address and fee paid, if any._____
_____

I (do) (do not) have any other charges pending against me. If you do, and have an attorney, give his name and address._____
_____.

Date:_____ _____
Signature of Defendant

A.O.C., LR-20 REV. 6/23/77 (EFF. 9/12/77)

_____ County Court _____ Municipal Court

CHARGES: ___ Non-Indictable _____ Docket No. _____

___ Indictable _____ Ticket No. _____

PLEASE PRINT

STATE OF NEW JERSEY)
)ss
County of _____)

AFFIDAVIT

(Income and Assets)

I, _____, upon my oath state that:
I live at _____
State of _____. My phone number is _____
My social security number is _____. My date of birth is _____

I request the court to consider this Affidavit as to my ability to

___PAY THE FINE ___PAY AN ATTORNEY

1. I (am) (am not) employed. The name and address of my employer is _____.
2. My salary is $____ per____. Date hired _____
   Last day worked _____.
3. I (am) (am not) married. Age, name and address of wife or husband _____.
4. Spouse's employer _____.
5. My spouse's salary is $____ per____. Date spouse hired _____.
   Last day spouse worked _____.
6. I am responsible for the support of the following children: (List names and ages). _____.
7. I and/or my spouse own the following motor vehicle(s): (List year, make and present market value of each vehicle). _____
8. I and/or my spouse own the following real estate: (State the location and market value of the property. If the property is mortaged, state the balance due on the mortgage and the monthly payments). _____
9. I pay $____ per____ in rent for my residence.
10. My outstanding debts and bills are as follows: (List all creditors and the amount owned to each. If payment is being made in installments, also list the amount paid every week or month, as the case maybe _____

A.O.C.,LR-20 6/23/77 (EFF. 9/12/77)

11. I and/or my spouse have the following money: $_____in cash on hand, $_____in savings account (s) or certificate(s) on deposit at the following bank(s), savings and loan association(s) and/or credit union(s)_____. $_____in checking account(s) at the following bank(s)_____. or being held in trust for me and/or my spouse by_____.

12. I and/or my spouse own jewelry, precious metals and stones, stamps, coins, works of art, antiques and furs having a total value of $_____.

13. I and/or my spouse own the following stocks, bonds and other securities: (List name of issuer, number of shares or face value, present market value and interest or dividend received yearly)._____

_____

14. I and/or my spouse own, or have a partnership interest in, the following business(es): (List name(s) and nature of business(es), and the present market value of your and/or your spouse's interest in the business(es)._____

_____

15. In addition to that which has been previously mentioned, I and/or my spouse own personal property having a total present market value of approximately $_____.

16. I and/or my spouse receive $_____per_____from Welfare, $_____per_____from Social Security, $_____per_____ from the Veterans' Administration, and $_____per_____from (specify)_____.

I have read this Affidavit and I hereby declare that the statements contained in it are true and complete and that I have no assets or sources of income not included in this Affidavit. I understand that I am subject to prosecution for any deliberate false or misleading statement made by me in completing this Affidavit.

_____
Signature of Defendant

Subscribed and sworn to
before me this_____day
of _____19_____.

_____
Name and Title

(If charged with an Indictable offense, also complete the attached APPLICATION FOR REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER.)

BEING RELEASED

If you have been arrested and are in jail, you will want to get out (be released) as soon as possible. Under our judicial system, a person is innocent until proven guilty in a court of law. An accused person must be brought before a judge, usually within 72 hours, to hear the charges. The judge must be convinced that a crime has been committed. He must believe that you are involved in the crime. The proof must be provided by those who accuse you; this may be the police or other complainants. If there is not enough proof, the charges will be dropped. You will be released at once.

Suppose your case is to go to trial. Should you be held in jail until the trial begins? Should you be let out? The judge must decide. If you are accused of a crime that is punishable by death, you must stay in jail. If not, you may be released on bail money left with the court to make sure of your return. You may also be released on your own word - "recognizance" (O.R.). Accused persons are considered innocent until proved guilty in court. That is the reason for releasing them until the trial. But the judge wants to be sure that they will come to court when the trial begins. And some cases take a long time to get to court. So the judge decides whether to require bail or accept a person's own word.

In deciding the method of release, the judge considers the defendant's:

- family (whether or not relatives are in the area)
- community ties (length of time in the city)
- employment record
- education

A person unknown to the community and without family or a job is usually required to post bail - put up a certain amount of money. This money is held by the court to assure a defendant's return to court for trial.

The amount of money needed for bail depends on the type of the crime. More money is required for felonies than for misdemeanors. But the 8th Amendment, says that bail "may not be excessive" - too high. If the bail were "excessive", poor people would have to stay in jail while rich people could get out. This would be unfair. It would also violate the 14th Amendment. The 14th Amendment requires that all people - rich and poor - get equal treatment.

Suppose a person is charged with a misdemeanor. That person has lived a long time in the town without other arrests. He or she has a family and a job. Then the judge may decide to release the person on their own recognizance (promise to appear in court).

One more note on being released. Suppose an arrested person's request for a lawyer is denied. Suppose the right to be brought before a judge is somehow overlooked. Must that person stay in jail without help?

No, the person may write a letter to the judge of the court. In the letter, state that you are in jail and that you have not been brought before a judge to hear the charges. You have not been permitted to talk with a lawyer. Ask the guard at the jail to take it to the judge. By law, the guard must do so. After getting it, the judge will issue a "writ of habeas corpus". This is a court order. It requires the jailer to bring you before a judge. The judge decides whether or not you are being held legally.

YOUR RIGHTS IF ARRESTED

You have read this booklet and done the activities. You should now be able to answer the questions asked in the beginning. You should be able to give reasons for your answers. Can you tell what Constitutional rights apply?

ACTIVITY J What if I am Arrested?

Answer the questions. Give reasons based on the information you have learned. Include Constitutional protections.

1. Do I have to answer questions? Why or why not?

2. Do I have to sign anything? Why or why not?

3. Can I get someone to help me?

4. Am I protected from being physically or verbally harmed while in jail? Why or why not?

5. Is there a time limit on how long I can be kept in jail? Why or why not?

IMPORTANT INFORMATION I NEED TO KEEP

1. If I am arrested, my rights include:

2. If I need a lawyer, I can phone...

3. If I am arrested and <u>not</u> brought before a judge within 72 hours, I can...

4. In deciding the amount of bail or whether to release me on my own promise to appear in court, the judge considers...

5. If I believe the police have denied me my constitutional rights, I can...

WHAT WILL I DO NOW?

	Yes	No
1. I will carry in my wallet a card stating my rights if arrested.	___	___
2. I will look up and keep the names, addresses and phone numbers of several lawyers who could help me if I am arrested.	___	___
3. I will file a complaint if my rights are denied or if I see someone else's rights denied.	___	___

WORDS TO USE

From the ten words listed below, choose one to write in each blank so that the paragraph makes sense. Return to the WORDS TO KNOW in the front of this booklet if you need help in choosing the words.

alleged	arrest (ed)
counsel	due process
evidence	immunity
incriminate	testify
waiver	warrant

When the suspect was_____for the _____crime, the police wanted to search the house for_____. They went to the judge to get a _____for the search. They found stolen goods in her house, which seemed to further _____the suspect. The police wanted to question her,but she refused to sign the _____. She had no money,so a lawyer was assigned to serve as her_____. He would try to get witnesses to_____on her behalf. From the time the police first stopped her, her right to_____ of law was protected.

POLITICAL AND LEGAL COPING SKILLS
CITIZEN RIGHTS AND RESPONSIBILITIES

WHAT IF...YOU ARE ARRESTED?

-- ONE OF A SERIES OF READINGS AND ACTIVITIES--
STUDENT BOOKLET - SET II

Katherine L. Wallin
Audrey S. Heinrichs, Ph. D.

Institute for Political / Legal Education

WORDS TO KNOW

alleged: Stated without proof.

It was alleged that Jack Brown robbed the bank.

arrest: Take a person into custody.

The Police will arrest people suspected of having committed a crime.

counsel: A lawyer who represents someone in a legal proceeding.

A suspect has the right to counsel immediately after being arrested.

due process: The right of a person to fair treatment in a legal proceeding.

It is the duty of the judge to ensure due process of law to all people appearing in court.

evidence: Information allowed by a court to show the facts of a case.

The judge allowed the gun to be introduced as evidence.

immunity: Protection promised to a witness in return for information.

The witness was granted immunity in exchange for information given in court.

incriminate: To involve in a crime.

New evidence seemed to incriminate the suspect further.

testify: To make a statement in courts under oath.

The witness was called to court to testify about the robbery.

waiver: Giving up claim to one's legal rights.

A suspect rarely signs a waiver, giving up the right to have a lawyer present during questioning.

warrant: A document giving legal power to carry out an arrest or a search.

The judge signed a warrant giving the police the power to search the apartment.

WHAT IF ... YOU ARE ARRESTED?

Have you ever thought about what it would be like to be arrested? Or is being arrested something that happens in the movies, on television shows or in real life, to someone else?

Probably you have heard the words "You're under arrest". Often these words end a TV serial. The suspect has been caught in the last two minutes of the show. In the final scene, you see the suspect being searched, hand-cuffed and then driven away in the police car. Your interest was held by the chase, the shoot out, or the drug bust. Now, it fades with the arrest and you turn to other things. What happens after the arrest is rarely shown. You do not know.

What might <u>you</u> be thinking and feeling if <u>you</u> were arrested? What questions would you have? What facts and information might you need to get help? In the activity below, you are asked to list what some of your feelings, thoughts,and questions would be if arrested.

ACTIVITY A ARRESTED: How do I feel? What do I want to Know?

Suppose you have been arrested. You are in handcuffs and are sitting in a police car. Ask yourself:

What are some of my feelings?

_____

_____

What are some of my concerns?

_____

_____

_____

What do I want to know?

_____

_____

_____

In Activity A you may have listed such concerns and questions as:

- Do I have to answer questions?
- Do I have to sign anything?
- Can I get someone to help me?
- How will I be treated?
- How long will I be kept in jail?

This booklet will answer these questions and others. You may never be arrested or need this information for yourself. But you may need to know certain facts so you can help a friend or relative. Besides giving you information on the arrest process, this booklet will give you a chance to think about justice, fairness, constitutional rights and the judicial system. Learning important facts and developing informed opinions about the American judicial system will make you a more effective citizen.

BEING ARRESTED

"You are under arrest." If these four words are spoken to you, they mean:

- You are in the custody of the police.
- You may not leave.
- You are being held for court action.
- You must go with the officer.

You may be arrested for allegedly commiting:

An Infraction - a minor crime such as illegal parking, punishable by fine only.

A Misdemeanor - a minor crime such as breaking and entry, punishable by fine and/or less than one year in jail.

A Felony - a serious crime such as murder or rape, punishable by imprisonment for over one year.

The arrest may occur after many months of police work - the type sometimes shown on T.V. The clues needed to solve the crime are uncovered slowly. Warrants - legal documents - are gotten. Finally the suspect is arrested. In contrast, a person might be arrested during "hot pursuit". In that instance, the police might chase and arrest a person whom they saw leaving a bank carrying a bag and holding what looked like a gun, while witnesses shouted "robbery".

But no matter in what way a person is arrested, the police must act according to certain rules. They must have reason to believe a suspect committed a crime. As part of the executive branch of government, police enforce the law. They are law enforcement agents. They have the power and the responsibility to arrest people whom they suspect of breaking the law.

In making arrests, the police must treat people fairly. They are required to do so because they are agents of government (the state). And the 14th Amendment to the U.S. Constitution says:

> ..."Nor shall any State deprive any person of life, liberty or property without due process; ... nor deny to any person ... equal protection of the laws."

Due process means that your liberty or freedom cannot legally be taken away without the police (as agents of the state) taking certain steps. These steps or procedures protect citizen rights granted to all people by the U.S. Constitutution. Simply stated, police officers cannot break the law in order to enforce it. Equal protection of the laws means that police must treat all people the same (equally).

But the rights you are guaranteed by the Constitution do not mean that you are free to ignore the police siren or red light of the police car. You must stop when requested to do so. You must show the officer your driver's license and car registration.

Remember, the police can request this information from you without giving you any reason. If you are standing on a street corner, they can ask you your name and address. They can ask to see identification. For this reason, it is a good idea to always carry proper identification such as a driver's license, a social security card or a voter registration card.

Police can ask you why you are in an area. They can do this without violating your rights. They have the authority to stop and question people. This police power is based on the police responsibility to protect the community. There might have been a robbery just reported in the area. You might fit the description of the suspect. Or you might be able to give police important information on what you have seen or witnessed.

The police do not have to give you a reason for stopping you. But they must have <u>probable cause</u> to do so. They must have some reason to believe you are involved in a criminal activity. Besides stopping you, an officer can also "frisk" you. This is called a protective search. It is done to see if you have a weapon. It is done to protect

the safety of the officer. But again, the officer must have probable cause and believe that you, the suspect, are armed. Otherwise, the "stop and frisk" can be ruled illegal.

Police do not have the power to search you or to arrest you because they do not like your looks, attitude, behavior or ideas. You and your property are protected by the 4th Amendment to the U.S. Constitution. This Amendment says:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The 4th amendment protects your right to privacy. It prevents the government (the police) from illegally searching you or your home. It requires that search warrants - forms signed by a judge or court official - be issued only with probable cause. The information must be given under oath, The warrant must give a description of the place the persons to be searched, and the items to be seized.

The words of the 4th Amendment seem quite clear. They appear to protect the privacy of the citizen. They seem to require the police to follow certain rules when searching for evidence. But some people have complained that they were not treated fairly by the police. These people have filed suit. In several instances, the cases went to the U.S. Supreme Court. The decisions of the nine justices meeting in Washington, D.C. have had an effect across the nation.

One particularly important case - Mapp v. Ohio (1961) - involving search and seizure and 4th amendment protections, concerned a lady living in Ohio. Her name was Mapp. One day police came to Mrs. Mapp's door. They wanted to be let in. They had heard that a suspect wanted for questioning in a recent bombing incident was in the area.

Mrs. Mapp refused to let the police inside her home. She argued with police for several hours. Finally, more police arrived at the home and pushed in the door. Mrs. Mapp wanted to know under what authority the police broke into her home. She demanded to see a search warrant. She later testified that a piece of paper was held up but she had no chance to read it and could not verify that it was a search warrant.

Meantime, despite Mrs. Mapp's protests the police searched her home. They did not find the suspect they were looking for. But they did find some "dirty books" in Mrs. Mapp's basement. The officers then arrested Mrs. Mapp for having "dirty books" because having "pornographic books" was against the law in Ohio.

In court, the books taken from the basement were used as evidence against Mrs. Mapp. She was found guilty of breaking the law. However, Mrs. Mapp believed that the verdict - the decision of the court - was unfair. She felt that the evidence used in determining her guilt had been obtained illegally. She decided to appeal - take her case to a higher court. In the appeal, her lawyers argued that the judge in Mrs. Mapp's case should not have allowed the "dirty books" to be used as evidence because the books were discovered during an illegal search. They said the police acted unfairly.

In the next activity, you'll have a chance to review the facts of the Mapp case. Was her privacy invaded? Was the evidence legally obtained? If not, should illegally obtained evidence be permitted? If you were a member of the U.S. Supreme Court what would you have decided?

ACTIVITY B Search and Seizure: What is Fair?

1. List the major facts in the Mapp Case.

2. Give the main argument of Mrs. Mapp's lawyers?

3. Should the police be permitted to use unlawful means to obtain evidence? Why or why not?

4. Would you as a Supreme Court judge vote to overturn Mrs. Mapp's conviction?
   Why or why not?

5. Discuss your decision with some one else. Did you agree?
   If not, how did it differ from yours?

Mrs. Mapp's conviction was overturned by the U.S. Supreme Court. The court ruled that the evidence (the dirty books) had been obtained illegally and should not have been used against her.

As a result of the Mapp case, if accused persons believe that evidence against them has been obtained illegally, their lawyers can argue that the police violated their rights. Then, the judge must decide if the evidence was obtained legally or illegally. If illegally obtained, the evidence cannot be used.

In other words, the police must abide by the rules and follow legal procedures in getting evidence. Many police argue that the decision in the Mapp case makes police work very hard. They say that criminals act unfairly. They believe that if certain evidence cannot be used (is not admissable) criminals will go free.

On the other hand, a very famous justice of the Supreme Court, Oliver Wendell Holmes, said:

> It is better to let a criminal go free than for the government (police) to play an ignoble (dishonorable) part .

Write why you agree or disagree with Holmes' statement.

_____

_____

_____

_____

_____

_____

_____

Because of the importance of search warrants, you should know what one looks like. You should be able to understand and recognize its most important sections. Read the search warrant on the next page. Answer the questions in Activity C on page 10.

In the Municipal Court of the

_____ of _____ County of _____ 172.

State of New Jersey

State of New Jersey,

vs.

Defendant.

SEARCH WARRANT

To the Sheriff, or any Constable, Marshal, or Police Officer of said County, or to any Officer or Trooper of the New Jersey State Police:

WHEREAS, proof, by oath, having been this day made before this court by

of the of

County of State of New Jersey, and there is probably cause for believing that said affidavit is true, that the following goods:

(describe articles as in complaint)

have been feloniously stolen and carried away from his and that he has reasonable cause to suspect, and does suspect that said goods and chattels are concealed in

(describe premises as in complaint)

You are Therefore Commanded, in the name of the State of New Jersey, to make immediate search of the person of the defendant and, in the daytime, of the building above situated and described, for the said goods and chattels; and if you find the same, or any part thereof, that you secure the same and bring it or them forthwith before this court with the body of the defendant, to be dealt with according to law.

Signed and sealed this
day of 19

_____
Judge - Magistrate

of the of
County of N. J.

Officer executing warrant must give receipt for property, specifying it in detail, to the person from whom it was taken, or in whose possession it was found, or, in absence of any person, leave receipt in place where he found the property, make inventory publicly or in presence of person from whom property is taken and applicant for warrant, if he be present; return warrant and deliver property taken to the magistrate issuing it along with the body of the defendant if he be arrested.

ACTIVITY C Understanding a Search Warrant

Read the search warrant on page 9. Answer the questions.

1. To whom is the warrant addressed?

2. How was proof given?

3. Why do you think it is necessary to describe the goods to be seized and the place to be serached?

4. Who signs the warrant?

5. What are the police to do if they find the defendant and/or goods?

6. How does the requirement of a search warrant protect you?

Due process under the 4th and 14th Amendments protects you from illegal arrests or unfair treatment by the police. However, sometime mistakes are made. Occasionally the wrong person is arrested. If this should happen to you, do not argue with the arresting officer. Do not "mouth off" or otherwise resist arrest. That might cause you to face charges of assaulting a police officer!

Instead:

- Keep calm
- Remember badge numbers and names of police involved
- Identify witnesses
- Go to the police station
- Ask for a lawyer
- Give only your name and address
- Do not sign anything

If the police make an illegal arrest or violate citizen rights, legal action can be taken. You can sue for false arrest and seek damages. You can apply to have the official records sealed if you are mistakenly arrested or if your case is dismissed. Without these remedies, your rights are meaningless. An attorney can advise you what steps to take.

One step to take is to make a complaint. Many police departments have set up special offices to handle citizen complaints. Activity D will help you find out how complaints are processed in your town. As a taxpayer, you are entitled to know how your police department is run and how citizen complaints are handled.

ACTIVITY D Citizen Complaints: What are the Procedures in your Town?

1. Does your local police department have a procedure for handling complaints against an officer?

   Yes ___ No ___

   If so, what is it?

   _____

   _____

   _____

2. How many complaints were there in 1977-78?

   _____

3. Did any of the complaints result in an officer(s) being removed from the force?

   Yes ___ No ___

   If so, how many?

   _____

   _____

   _____

   _____

4. How does the police department tell citizens about the complaint procedure?

   _____

   _____

   _____

5. Was the police department cooperative in answering your questions?

   Yes ___ No ___

   If not, what could you or your adult education class do?

   _____

   _____

   _____

   _____

   _____

BEING BOOKED

If arrested, you will be taken to the police station. There you will be booked. Booking is the formal procedure whereby a suspect's name and address is placed in the arrest book or "on the blotter". After being logged in, the suspect is finger-printed and photographed. Money and personal property are usually taken from you (impounded). You will be given a receipt for your property and asked to sign it. The arresting officer must fill out a formal complaint and an arrest report. Read the part of the complaint form printed below. Then read the arrest report on page 14. Note that the arrest report has space for "BAIL HEARING" and"FINAL RESULTS". Eventually the report will provide a complete summary of the case. Answer the questions on page 15.

WB62534

COURT

COUNTY OF _____ N.J.

COURT DOCKET NUMBER(S): C–

COURT CODE NUMBER

COMPLAINT RESULT OF CASE RETURNED BY PROSECUTOR

PRIOR CASE DOCKET NUMBER: C–

The State of New Jersey
vs.

Defendant: Anthony Paul AnyPerson

Address: 233 Your St.

City, State: Woodbury, N.J.

COMPLAINT

Complainant: Ptl. Jay Brown (NAME OF COMPLAINANT) of Woodbury Police Dept. (IDENTIFY DEPARTMENT OR AGENCY REPRESENTED)

Residing at _____ (ADDRESS OF PRIVATE CITIZEN COMPLAINANT)

Upon oath says that, to the best of (his) (her) knowledge, information and belief, the named defendant on or about the 18 day of Jan, 19 78, in the city of Yourtown MUNICIPAL CODE NO. _____ County of Gloucester N.J

did:

Break& enter home at 57 Johnson St.

Charge Number 1	Charge Number 2	Charge Number 3
N.J.S. 2A:94-1	N.J.S.	N.J.S.

Subscribed and sworn to before me this 18 day of January, 19 78

Signed _____ (NAME AND TITLE OF PERSON ADMINISTERING OATH)

Signed _____ (COMPLAINANT)

WOODBURY POLICE DEPARTMENT

ARREST REPORT

Identification Number: 4491

1. Complaint Number	2. Mun. Code	3. Phone Number	4. UCR	5. Prosecutor's Case Number	6. Department Case Number
WB 62534		845-0064			78 - 117

7. Name Last	First	Middle	8. Phone	9. Alias-Nickname
ANYPERSON	Anthony	Paul	888-2222	Tony

10. Full Address - Number - Street - Municipality - Zip code	11. Place of Birth
233 Your St., Woodbury, N.J.	Sewell, N.J.

12. Date of Birth	13. Age	14. Sex	15. Race	16. Height	17. Weight	18. Hair	19. Eyes	20. Complexion	21. Marital Status
8-14-55	22	M	Cau	5'10½"	180	Brn	Brn	Med	Single

22. Other Descriptive Information	23. Driver's License Number
Lft index finger is missing	A222 45378 08559(N.J.)

24. Employer	25. Occupation	26. Social Security Number
You Buy Markets Inc.	Cashier	333-444-5555

27. Employer's Address	28. Business Phone
770 Main St., Yourtown, N.J.	999-1111

DETAILS OF ARREST

29. Arrest Date	30. Time	31. Location of Arrest	32. Municipal Code
01/18/78	2:30a.m.	57 Johnson St.,Woodbury, N.J.	

33. Crime	34. N.J.S. Statute	35. Arresting Officer
Breaking, Entering	2A:94-1	Ptlm. Brown

36. Complainant's Name and Address - Zip Code	37. Phone Number
Ptlm. Brown, Woodbury, P.D.	845-0064

38. Crime Dept.	39. Time	40. Location of Crime	41. Municipal Code
Patrol	2:30a.m.	57 Johnson St.	

42. Arrest Type	43. Juvenile Status	44. Code	45. Constitutional Rights - By Whom	46. How Responded
On View	N/A		Arresting Officer	Waived Orally

47. Own	48. Multiple	49. Other	50. Printed	51. Photo	52. Prev. Rec.	53. UCR - A.S.R.
yes			Yes	Yes	Unk.	Reported Month_____ Year_____

54. Vehicle Information - Year - Make - Body Type - Color - Registration Number & State - Other Descriptive Information
1978 Chev. Blu 555111 (N.J.) 4 Dr.

BAIL HEARING

55. Date	56. Court	57. Judge/Authorized Person

58. Amount Bail	59. Results of Hearing	60. Code	61. Place Committed/Detained

FINAL RESULTS

62. Date	63. Court	64. Judge

65. Verdict	66. Code	67. Disposition	68. Date	69. Code

JUVENILE INFORMATION

70. Parent/Guardian Contacted By	71. Date	72. Time	73. Released To:	Relationship

74. Full Address - Number - Street - Municipality - State - Zip Code	75. Date	76. Time	77. Phone Number

78. Parent/Guardian	79. Full Address - Number - Street - Municipality - State - Zip Code	80. Phone Number

81.	82.	83.	84.	85.	86.	87.	88.

89. Narrative

Name 90. Signature	91. Badge Number	92. Completed	93. Date of Report	94. Reviewed

ACTIVITY E Understanding Arrest and Complaint Forms.

Read the facts of the "made-up" case reported on page 13 and 14.

1. What is the complaint number?

_____

2. Who has been arrested (the defendant)?

_____

3. Who is the complainant?

_____

4. Who is the arresting officer?

_____

5. When did the arrest take place?

_____

6. Where did the arrest take place?

_____

7. What is the crime?

_____

8. Why do you think the arrest report has so many details about how the suspect looks?

_____

_____

_____

_____

9. Why do you think the complaint is made under oath?

_____

_____

_____

_____

_____

WOODBURY POLICE DEPARTMENT
200 North Broad Street
Woodbury, New Jersey

Interrogation
Advice of Rights

Place: _____

DATE: _____

TIME: _____

Before we ask you any questions, you must understand your rights.

Q. Can you read and write?
A.

Q. Do you understand that you have the right to remain silent?
A.

Q. Do you understand that anything you say can and will be used against you in court?
A.

Q. Do you understand you have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning?
A.

Q. Do you understand that if you cannot afford a lawyer, one will be appointed for you before any questioning if you wish one?
A.

Q. Do you understand that if you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time? You also have the right to stop answering at any time until you talk to a lawyer.

Signed: _____

Waiver of Rights

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been used against me.

Signed: _____

Witness: _____

Witness: _____

Time: _____

BEING QUESTIONED

Up to this point, the police have not questioned - interrogated - the suspect concerning the alleged crime. They have asked only questions concerning the suspect's name and address.

If you are arrested and the police want to ask you about the incident leading to your arrest, they must advise you of your rights. The Woodbury Police use the form on the opposite page.

ACTIVITY F Interrogation: What are your Rights?

1. What rights does this form advise you of?

_____

_____

_____

_____

2. Why would the police want you to sign the form?

_____

_____

_____

3. If you start answering questions, must you continue? Yes___ No___
If not what can you do?

_____

_____

_____

_____

_____

_____

4. What does it mean to waive your rights?

5. Do you think it's a good idea to waive your rights? Yes___ No ___
Why or why not?

6. Why do you think two witnesses are needed?

7. Why do the police want to know if you can read or write?

The advice and waiver form on page 16 mentions two important rights:

- the right to remain silent
- the right to talk with a lawyer

Our founding fathers thought that these rights were vital to the protection of the individual. They included them in the U.S. Constitution. Before waiving their rights, giving them up, an arrested person should have a complete understanding of their importance.

The 5th Amendment says that:

> No person...shall be compelled (forced) in a criminal case to be a witness against himself...

Obviously, by remaining silent you cannot make yourself appear guilty (incriminate yourself). Therefore, lawyers suggest that all persons arrested remain silent. People should give only their name and address until they talk with a lawyer.

But your right to remain silent may make the police work of solving a crime more difficult. If the police can get a person to confess - admit guilt - during questioning, then a case may be solved more quickly.

In the past, some police did not tell people of their constitutional right to remain silent. Instead, police used many different tactics to get a confession. These included the use of physical and mental force. Suspects were questioned for hours and then confessed just to get some sleep or food. Police offered "to help" the defendant even though they had no power to do so. They promised the defendant a lighter sentence (punishment) in trade for a guilty plea.

Some of these police tactics were challenged in law suits. A famous case, Miranda v. Arizona, came to the U.S. Supreme Court in 1966 for a ruling. The facts of the case involved a man by the name

of Ernesto Miranda. He was arrested for kidnapping and raping a woman in Phoenix, Arizona in 1963. He was identified by the woman in a line up. After being questioned for hours by the police, Miranda signed a written confession. This confession was introduced as evidence in his trial. Miranda was found guilty.

Miranda appealed his conviction to the U.S. Supreme Court. His lawyer argued that the police had not explained his legal rights to him before they questioned him. He claimed they did not explain that he had a right to remain silent and a right to a lawyer.

The attorneys for the State of Arizona said that the police had read Miranda a statement on the top of the confession form. It stated that the confession was being made freely (voluntarily) and without threats or promises of freedom from prosecution (immunity) It ended with these words "with full knowledge of my legal rights and understanding that any statements I make may be used against me". Therefore, Arizona lawyers argued that, by signing the confession with those words on it, Miranda was confessing of his own free will.

If you had been a Supreme Court justice hearing the fact of this case, would you have decided in favor of Miranda or the State of Arizona?

ACTIVITY C The Miranda Case: What do you Think?

1. Why might Miranda have signed a confession?

2. Why should the court look at the way a confession is gotten? Does it make a difference how a confession is made?

3. Should police have to tell people their rights or should people know them? Why or why not?

4. How does the law attempt to balance the citizen's right to remain silent with the state's responsibility to solve crime?

5. How do you think the Supreme Court ruled in the Miranda Case?

The Supreme Court ruled in favor of Miranda. A majority of judges felt that Miranda had not been properly told of the possible results (consequences) of waiving his right to remain silent. The judges felt Miranda did not understand the effect of signing a confession. They felt he did not know that the confession could be used against him.

But by the decision, was the court throwing out all confessions? No, instead it was saying that confessions - to be used as evidence - must have been given freely and voluntarily.

The decision has gone a long way in assuring that the rights of the arrested are protected. In fact, now when the police read a person their rights prior to questioning, they sometimes refer to them as giving the Miranda warnings:

1. You have the right to remain silent.
2. Anything you say may be used against you in court.
3. You have the right to have a lawyer advise you.
4. If you cannot afford a lawyer, one will be provided free of charge.

BEING REPRESENTED

The right to a lawyer or to counsel is based on the 6th Amendment to the Constitution. This Amendment says that ...

> in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense.

At one time this right was interpreted as meaning only that a person had a right to a lawyer. But when in the proceedings is an attorney required - during the trial, at the first (preliminary) hearing, at a suspect "line-up", or during questioning? And what if a person had no money to pay legal fees?

RIGHT TO COUNSEL

"You have a pretty good case, Mr. Pitkin. How much justice can you afford?" 1

ACTIVITY H Right to Counsel: What do you think?

1. Who are the two people in the cartoon?

_____

2. What is the meaning of the cartoon?

_____

_____

_____

_____

_____

_____

3. What do you think about the following statement?

> There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.
> Justice Black

Gideon v. Wainwright (1961) is an interesting case concerning the right to counsel. The case involved one man's fight for his constitutional rights. It shows how the determination of one individual can result in a court decision affecting many people and the whole judicial system.

Police in a Florida city arrested Clarence Gideon for "breaking and entering" a pool hall. The record shows that Gideon, at age 51, had been arrested four times, married three times and was known as a gambler and a drifter. Some might describe Gideon as a "loser" and assume his guilt but Gideon claimed he was innocent. He wanted to prove it. He felt he needed the help of a lawyer. He told the Florida judge he had a constitutional right to an attorney. Since he had no money to pay a lawyer, he asked the court to provide him with one.

But the judge said that, under Florida law, the State only appointed an attorney to represent a defendant charged with an offense punishable by death. Since Gideon was charged with a misdemeanor, he was not entitled to free counsel. Gideon thought otherwise.

He was unsuccessful in defending himself during his trial. The jury found him guilty. The judge sentenced him to five years in State prison.

While in prison, Gideon studied law books. He prepared his own appeal to the U.S. Supreme Court. He charged that the State of Florida had denied him due process of law when it refused to provide him with an attorney. The court heard Gideon's case, and agreed that Gideon had been denied due process. A lawyer should have been appointed to defend him. In the new trial, with a lawyer representing him, Gideon was found not guilty (acquited).

The Supreme Court decision in the Gideon case has had far reaching affects. Now, the poor as well as the rich are assured of legal counsel if arrested.

The importance of having a lawyer represent you was what Gideon was arguing. It is a constitutional right. It is a practical necessity. Someone without knowledge of the law or legal experience cannot properly defend himself. A lawyer will see that your constitutional rights are protected by performing certain tasks:

Amendment	Task
6th ...the accused shall enjoy the right...to be informed of the nature and cause of accusation.	Seek an early preliminary hearing.
8th Excessive bail shall not be required...	Requests reasonable bail.
6th In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ...	Arrange for speedy trial.
6th...the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor...	Call (subpoena) witnesses on your behalf.
6th...the accused shall enjoy the right...to be confronted with witnesses against him.	Question your accusers.

But if you have been arrested and are in jail, how do you contact a lawyer?

While there is no law in New Jersey requiring the police to allow a suspect to make a telephone call, most police departments do allow you to complete one call. This call should be directly to a lawyer or to a trusted friend or relative who will then contact a lawyer.

You might find it a good idea to carry the name and phone number of a criminal lawyer in your wallet. Then you will have it, should the need arise. The lawyer might be someone recommended by a friend. Or you can get the name of lawyers in your area by calling the Lawyer Referral Service of the N.J. Bar Association. (Toll free number 800-792-8315 - 9:00 a.m. - 4:30 p.m., Monday through Friday)

Lawyers' fees may be high. They are based on the amount of time and labor spent on your problem. Before hiring a lawyer, you should ask for an estimate of the costs. This should be in writing and kept by you. Most lawyers request a retainer or down payment to cover initial work.

If you have little or no money to hire a lawyer you may be entitled to be represented by the public defender's office. To determine if you are elegible, you will have to fill out forms like those printed on the next three pages.

You will have to answer questions and swear that your answers are true. Some people believe that the questions are too personal and an invasion of privacy. Others argue that the information is necessary to see that only very poor (indigent) people unable to pay are represented by the public defender.

ACTIVITY I Applying for Representation by the Public Defender.

Read the next three pages. Think about how you would answer the questions. (It is not necessary to write them.) Then write the answers to these questions.

1. List any questions you thought should not be asked and tell why.

2. List any questions you did not understand.

3. Why do you think you must answer these questions under oath?

4. If you give false information, what can happen to you?

(If the defendant is charged with an indictable offense, asserts he is indigent, and has not affirmatively stated his intention to proceed without counsel, have him complete this application and then refer it to the Office of the Public Defender).

APPLICATION FOR REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER

I have completed the attached Affidavit (Income and Assets) to inform the Court as to my ability to pay an Attorney and to have the Court refer me to the Office of the Public Defender as an indigent defendant charged with an indictable offense.

Place of Birth_____ Date of Birth_____

Sex_____ Ht._____ Wt._____ Race_____ Date Arrested_____.

Place Alleged Offense Committed_____ (Town) Date Alleged Offense Committed_____.

Arrested By_____ (Name of Arresting Agency and Location).

Check (and complete) whichever applies:

_____I am presently in jail and unable to obtain bail.
_____If I am released, I have a job waiting (yes) (no) with _____
_____I have been released on bail in the amount of $_____, which was posted by_____.
_____I have been released without bail or on my own recognizance.

On the present charge I (was) (was not) represented by an Attorney in the Municipal Court. If you were represented, give his name and address and fee paid, if any._____
_____

I (do) (do not) have any other charges pending against me. If you do, and have an attorney, give his name and address._____
_____.

Date:_____ _____
Signature of Defendant

A.O.C., LR-20 REV. 6/23/77 (EFF. 9/12/77)

_____ County Court _____ Municipal Court

CHARGES: ___ Non-Indictable _____ Docket No. _____

___ Indictable _____ Ticket No. _____

PLEASE PRINT

STATE OF NEW JERSEY)
)ss
County of _____)

AFFIDAVIT

(Income and Assets)

I, _____, upon my oath state that:
I live at _____ State of _____. My phone number is _____. My social security number is _____. My date of birth is _____.

I request the court to consider this Affidavit as to my ability to

___PAY THE FINE ___PAY AN ATTORNEY

1. I (am) (am not) employed. The name and address of my employer is _____.
2. My salary is $_____ per _____. Date hired _____. Last day worked _____.
3. I (am) (am not) married. Age, name and address of wife or husband _____.
4. Spouse's employer _____.
5. My spouse's salary is $_____ per _____. Date spouse hired _____. Last day spouse worked _____.
6. I am responsible for the support of the following children: (List names and ages). _____
7. I and/or my spouse own the following motor vehicle(s): (List year, make and present market value of each vehicle). _____
8. I and/or my spouse own the following real estate: (State the location and market value of the property. If the property is mortaged, state the balance due on the mortgage and the monthly payments). _____
9. I pay $_____ per _____ in rent for my residence.
10. My outstanding debts and bills are as follows: (List all creditors and the amount owned to each. If payment is being made in installments, also list the amount paid every week or month, as the case maybe _____

11. I and/or my spouse have the following money: $_____in cash on hand, $_____in savings account(s) or certificate(s) on deposit at the following bank(s), savings and loan association(s) and/or credit union(s)_____. $_____in checking account(s) at the following bank(s)_____ or being held in trust for me and/or my spouse by_____.

12. I and/or my spouse own jewelry, precious metals and stones, stamps, coins, works of art, antiques and furs having a total value of $_____.

13. I and/or my spouse own the following stocks, bonds and other securities: (List name of issuer, number of shares or face value, present market value and interest or dividend received yearly). _____

_____

14. I and/or my spouse own, or have a partnership interest in, the following business(es): (List name(s) and nature of business(es), and the present market value of your and/or your spouse's interest in the business(es).

_____

_____

15. In addition to that which has been previously mentioned, I and/or my spouse own personal property having a total present market value of approximately $_____.

16. I and/or my spouse receive $_____per_____from Welfare, $_____per_____from Social Security, $_____per_____ from the Veterans'Administration, and $_____per_____from (specify)_____.

I have read this Affidavit and I hereby declare that the statements contained in it are true and complete and that I have no assets or sources of income not included in this Affidavit. I understand that I am subject to prosecution for any deliberate false or misleading statement made by me in completing this Affidavit.

_____
Signature of Defendant

Subscribed and sworn to
before me this____day
of _____19____.

_____
Name and Title

(If charged with an Indictable offense, also complete the attached APPLICATION FOR REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER.)

BEING RELEASED

If you have been arrested and are in jail, you want to get out (be released) as soon as possible. Under our judicial system a person is innocent until proven guilty in a court of law. An accused person must be brought before a judge, usually within 72 hours, to hear the charges. The judge must be convinced that a crime has been committed and that there is probable cause of your involvement. The burden of proof is on your accusers - the state (the police or other complainants). If, in the opinion of the judge, there is not enough proof, the charges will be dropped and you will be released at once.

On the other hand, if you are to go to trial, the judge must decide whether or not to let you out of jail until the trial begins. Except for those people accused of crimes punishable by death, defendants are usually released by posting bail or on their promise to return (on their own recognizance - O.R.). Once again, the reason for releasing accused persons is that they are considered innocent until proven guilty. Most people agree that it is unfair to keep a defendant in jail until the trial, which might be many months away, unless that person is thought to be a danger to the community.

In deciding the method of release, the judge considers the defendant's:

- family (whether or not relatives are in the area)
- community ties (length of time in the city)
- employment record
- education

A person unknown to the community and without family or a job is usually required to post bail - put up a certain amount of money. This money is held by the court to assure a defendant's return to court for trial.

The amount of money posted for bail depends on the seriousness of the crime. More money is required for felonies than for misdemeanors. But the 8th Amendment, says that bail "may not be excessive" - too high. Otherwise, poor people, who could not raise high bail costs, would have to remain in jail while rich people could get out. This would be unfair. It would also violate the 14th Amendment which requires that all people - rich and poor - be treated equally.

If a person is charged with a misdemeanor, but has lived a long time in the area without other arrests, has a family, and a job, then the judge may decide to release the person on their own recognizance (personal reputation and promise to return).

One final note on being released. Suppose an arrested person's request for a lawyer and right to be brought before a judge are somehow denied or overlooked. Must that person remain in jail without help?

No, the person may write a letter to the presiding judge of the court. In the letter, explain that you are in jail and that you have not been brought before a judge to hear the charges. Nor have you been permitted to talk with a lawyer. Request that the guard at the jail take it to the judge. By law, the guard must do so. After receiving it, the judge will issue a "writ of habeas corpus". This is a court order. It requires the jailer to bring you before a judge to determine whether or not you are being held legally.

YOUR RIGHTS IF ARRESTED?

Having read this booklet and done the activities, you should now be able to answer the questions originally asked. You should be able to give reasons for your answers including what constitutional rights apply. Can you?

ACTIVITY I What if I am Arrested?

Answer the questions. Give reasons based on the information you have learned. Include Constitutional protections.

1. Do I have to answer questions? Why or why not?

2. Do I have to sign anything? Why or why not?

3. Can I get someone to help me?

4. Am I protected from being physically or verbally harmed while in jail? Why or why not?

5. Can I be kept in jail indefinitely? Why or why not?

IMPORTANT INFORMATION I NEED TO KEEP

1. If I am arrested, my rights include:

2. If I need a lawyer, I can contact...

3. If I am arrested and <u>not</u> brought before a judge within 72 hours, I can...

4. In deciding the amount of bail or whether to release me on my own recognizance (O.R.) the judge considers ...

5. If I believe the police have violated my constitutional rights, I can..

WHAT WILL I DO NOW?

	Yes	No
1. I will carry in my wallet a card stating my rights if arrested.	___	___
2. I will look up and keep the names, addresses and phone numbers of several lawyers who could help me if I am arrested.	___	___
3. I will file a complaint if my rights are violated or if I see someone else's rights denied?	___	___

WORDS TO USE

From the ten words listed below, choose one to write in each blank so that the paragraph makes sense. Return to the WORDS TO KNOW in the front of this booklet if you need help in choosing the words.

alleged	arrest(ed)
counsel	due process
evidence	immunity
incriminate	testify
waiver	warrant

When the suspect was_____for the _____ crime, the police wanted to search the house for _____. They went to the judge to get a _____ for the search. They found stolen goods in her house, which seemed to further _____ the suspect. The police wanted to question her but she refused to sign the _____. She had no money so a lawyer was assigned to serve as her_____. He would try to get witnesses to _____on her behalf. From the time the police first stopped her, her right to_____ of law was protected.